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13
14 UNITED STATES DISTRICT COURT
15 SOUTHERN DISTRICT OF CALIFORNIA
16

17 IN RE:

18 BOFI HOLDING, INC.
19 SHAREHOLDER LITIGATION.
20

21 This document relates to:
22 ALL ACTIONS.
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Case No. 15-cv-2722-GPC (KSC)

**THE INDIVIDUAL DEFENDANTS'
NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFF'S THIRD AMENDED
SHAREHOLDER DERIVATIVE
COMPLAINT**

Date: June 6, 2025
Time: 1:30 p.m.

The Hon. Gonzalo P. Curiel
Courtroom 2D (2d Floor - Schwartz)
Suite 1110

1 TO THE PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on June 6, 2025, at 1:30 p.m., before the Hon-
3 orable Gonzalo P. Curiel in Courtroom 2D of the above-captioned Court, located at
4 333 West Broadway, San Diego, California 92101, defendants Gregory Garrabrants,
5 Paul J. Grinberg, Nicholas A. Mosich, James S. Argalas, James J. Court, Edward J.
6 Ratinoff, Uzair Dada, Theodore C. Allrich, John G. Burke,¹ Andrew J. Micheletti,
7 Eshel Bar-Adon, John C. Tolla and Derrick K. Walsh (collectively, the “Individual
8 Defendants”), by and through their counsel, will move and hereby do move to dis-
9 miss plaintiff Andrew Calcatarra’s Third Amended Shareholder Derivative Com-
10 plaint (“TAC”). The Individual Defendants move to dismiss the TAC pursuant to
11 Rule 23.1 of the Federal Rules of Civil Procedure on the ground that plaintiff lacks
12 standing to prosecute this action because he has failed to plead particularized facts
13 showing that a majority of the current Board of Directors of Boff Holding, Inc.
14 (“Boff”)² in existence at the time plaintiff filed his TAC is unable to consider a pre-
15 suit demand in good faith. The Motion is based on this Notice and Motion; the ac-
16 companying Memorandum of Points and Authorities and the Request for Judicial
17 Notice in support thereof; all pleadings, papers and other materials in the Court’s
18 file for this action; any other matters of which this Court may or must take judicial
19 notice; and any evidence or oral argument offered at the hearing on this Motion.

20 Dated: April 4, 2025 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

21 By: s/ John P. Stigi III
22 JOHN P. STIGI III
23 POLLY TOWILL
24 ALEJANDRO E. MORENO
25 Attorneys for Individual Defendants

26 _____
27 ¹ Director John G. Burke passed away on March 31, 2023.

28 ² On October 1, 2018, Boff Holding, Inc. changed its name to Axos Financial, Inc.